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IN THE
COURT OF APPEALS OF INDIANA

KENNETH WILLIAM SHRYOCK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 10A01-0804-CR-163
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CLARK SUPERIOR COURT
The Honorable Cecile A. Blau, Judge
Cause No. 10D02-0605-FB-154

September 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Kenneth William Shryock appeals his sentence after he was convicted of Possession of Cocaine, as a Class D felony; Public Intoxication, a Class B misdemeanor; and for being an habitual offender, following a guilty plea. Shryock raises a single issue for our review, which we restate as the following two issues:

1. Whether the trial court abused its discretion in sentencing Shryock.

2. Whether Shryock's sentence is inappropriate in light of the nature of the offenses and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 16, 2006, police officers in Clark County were dispatched to a local bar after an argument began outside that bar. The officers noticed Shryock nearby and stopped him. Shryock appeared nervous and did not comply with the officers' orders. The officers then searched Shryock's person and discovered cocaine in his pants pocket. The officers arrested Shryock, who had two outstanding warrants against him and was currently on probation in another cause at the time of his arrest.

On May 18, 2006, the State charged Shryock as follows: possession of cocaine, as a Class B felony; intimidation, as a Class D felony; public intoxication, a Class B misdemeanor; being an habitual substance offender; and being an habitual offender. On May 15, 2007, Shryock attempted to plead guilty in exchange for a four-year executed sentence. However, the trial court rejected the proposed plea agreement.

On December 17, 2007, Shryock pleaded guilty to possession of cocaine, as a Class D felony; public intoxication, a Class B misdemeanor; and to being an habitual

offender. Shryock's guilty plea left sentencing to the trial court's discretion. The court accepted Shryock's guilty plea.

At the sentencing hearing, the court stated as follows:

> All right. The Court had the opportunity to read the Pre-Sentence Investigation Report . . . . You're a big man and one of the things I did notice in this criminal record is there are a lot of what I could call bully tactics; batteries, assault, hit and run. And you put that with the drugs and the alcohol, it makes a big bully. . . . And quite honestly that's a big concern to the Court . . . . Your extensive criminal record, I think we had to kill a tree to put it all down here. And basically the probation violations . . . are of concern because I don't want to waste probation if somebody doesn't take advantage of it. . . . And by your own admission you said [you]'ve never completed probation. . . . So I'm just saying [that] sometimes you lay a patch that you create for yourself and it's going to take you a long time to kind of deviate from that. Now I think it is remarkable that you had an employer who is sticking by you. That shows a couple of things; either you're very, very talented and you're such a hard worker when you're on or you know I'm not sure what but I would like to think it's that. I think it's pretty impressive that you've got a boy at Trinity and one that's at [the University of Kentucky]. They've done that despite you. . . . So the Court took a look at the fact that you have two children, that you did serve in the military. The court did note that you received letters of appreciation from the jail commander and some of the other officers, and that you did admit in a blind plea and accept your responsibility for these actions. The Court also noted again the extensive criminal record . . . from 1985 to the present time, some twenty plus years. The batteries and assaults and hit and runs which I already talked about. That was concerning. Being in fights while you were in jail. And by your own admission you really don't like to follow other people's rules which is a concern to this Court also. You have several Habitual Traffic Violations. . . . So I guess what I'm saying is you've kind of made your bed . . . and you may have to lie in it for a while until you get an answer for these actions. I found it very hard . . . to find you a candidate for rehabilitation. . . .

Transcript at 44-48. The court then sentenced Shryock to three years on the Class D felony[1] conviction and 180 days on the Class B misdemeanor conviction, to run concurrently. And the court enhanced Shryock's sentence by four and one-half years for

[1] Three years is the maximum sentence for a Class D felony conviction. See Ind. Code § 35-50-2-7(a) (2005).

being an habitual offender. The court ordered seven years executed and six months suspended to community corrections. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Abuse of Discretion

Shryock first argues that the trial court abused its discretion in sentencing him. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of that discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds on reh'g, 875 N.E.2d 218 (Ind. 2007). "An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." Id. (quotation omitted).

> One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Under those circumstances, remand for resentencing may be the appropriate remedy if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.

Id. at 490-91. Further, "the trial court no longer has any obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence."[2] Id. at 491.

Shryock asserts on appeal that the trial court considered improper aggravators and failed to consider significant mitigators. The trial court here entered a sentencing

[2] Shryock argues that the trial court failed to assign aggravators and mitigators proper weight. Since Anglemyer, that argument is no longer cognizable and we do not consider it.

statement, at the sentencing hearing, that explained its reasons for imposing Shryock's sentence. Specifically, the trial court noted Shryock's twenty-plus year criminal history, his numerous probation violations, his general attitude as a "bully," and his unwillingness to follow rules. See Transcript at 44. The trial court also noted, in Shryock's favor, that he had the support of his employer, he had two children in college, he had served in the military, he had received letters of appreciation from prison officials, and he had pleaded guilty.

Nonetheless, Shryock argues that the court's aggravators are improper. We cannot agree. Shryock cites no authority for the proposition that the aggravators identified above are somehow improper. See Ind. Appellate Rule 46(A)(8)(a). And Shryock's attempt to identify other improper aggravators supposedly relied upon by the trial court is unsupported by the record. See id. Hence, the trial court did not err in identifying aggravators.

Shryock also argues that the trial court ignored certain mitigators that are "clearly supported by the record." Appellant's Brief at 10. Specifically, Shryock asserts that the following purported mitigators are clearly significant here: (1) he has "been honest with [his] children and told [them] of his drug addiction so they can learn from his mistakes"; (2) "he admitted to his drug abuse and alcohol abuse"; (3) he "testified to his willingness to obtain treatment and the efforts he made on his own to obtain treatment"; (4) "he has become a believer in religion and the power that it has to rehabilitate a person"; and (5) that "the enhanced sentence would result in undue hardship to his dependents." Id. at 11-12. But the trial court was free to disregard mitigating factors it did not find to be

significant. See Carter v. State, 711 N.E.2d 835, 838 (Ind. 1999). And Shryock carries the burden on appeal of showing that such a disregarded mitigator is significant. See id. Shryock has not met that burden here. The court's reasons are not improper as a matter of law and are supported by the record. Thus, the court did not abuse its discretion in sentencing Shyrock.

Issue Two: Inappropriateness of Sentence

Shryock also argues that his sentence is inappropriate in light of the nature of the offenses and his character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Roush, 875 N.E.2d at 812 (alteration in original).

Shryock's sentence is not inappropriate. While there is nothing particularly aggravating about the nature of Shryock's offenses, that is not conclusive to our analysis. Rather, we consider both the nature of the offenses and the defendant's character. App. R. 7(B). And Shryock's character is extremely poor. He is forty-two years old, but has been charged with twenty-nine felonies and thirty-two misdemeanors over a twenty-three year span. Shryock also has eleven probation violations. And, at the time he was arrested on the instant offenses, Shryock was on probation and had two outstanding warrants against him. Finally, like the trial court, we are not persuaded that any other aspects of Shryock's character merit serious consideration in his favor. Accordingly, we affirm Shryock's sentence.

Conclusion

The trial court did not abuse its discretion in imposing Shryock's sentence. Nor is Shryock's sentence inappropriate. Hence, we affirm the trial court's sentencing order.

Affirmed.

ROBB, J., and MAY, J., concur.